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6 SYNGENTA CROP PROTECTION, INC.

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 (SAN FRANCISCO DIVISION)

11  
12 VALENT U.S.A. CORPORATION and  
13 SUMITOMO CHEMICAL CO., LTD.,

14 Plaintiffs,

15 v.

16 SYNGENTA CROP PROTECTION, INC.,

17 Defendant.

CASE NO. 08-cv-0720 VRW

**DECLARATION OF ERIK R. PUKNYS  
IN SUPPORT OF SYNGENTA'S  
REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS PLAINTIFFS'  
COMPLAINT**

Hearing Date: June 26, 2008  
Hearing Time: 2:30 p.m.  
Courtroom: Courtroom 6, 17<sup>th</sup> floor

**DECLARATION OF ERIK R. PUKNYS**

I, Erik R. Puknys, declare as follows:

1. I am an attorney admitted to practice in the State of California and the United States District Court for the Northern District of California, and a member of the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, attorneys of record for Defendant Syngenta Crop Protection, Inc. in the above-identified matter. The matters referred to in this declaration are based on my personal knowledge and if called as a witness I could, and would, testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of Valent USA Corporation's conditional EPA registration number 59639-151 dated February 28, 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: June 19, 2008


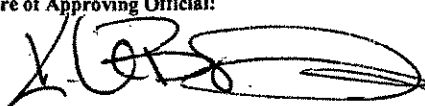
By: \_\_\_\_\_ / s /  
Erik R. Puknys

## **EXHIBIT A**

59639-151

2/28/2008

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 U.S. ENVIRONMENTAL PROTECTION AGENCY Office of Pesticide Programs Registration Division (7505C) 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460  NOTICE OF PESTICIDE: <input checked="" type="checkbox"/> Registration <input type="checkbox"/> Reregistration  (under FIFRA, as amended)	EPA Reg. Number:  59639-151	Date of Issuance:  FEB 28 2008
	Term of Issuance:  Conditional	
	Name of Pesticide Product:  V-10170 5 FS Insecticide	
Name and Address of Registrant (include ZIP Code):  Valent USA Corporation 1600 Riviera Avenue, Suite 200 Walnut Creek, CA 94596		
Note: Changes in labeling differing in substance from that accepted in connection with this registration must be submitted to and accepted by the Registration Division prior to use of the label in commerce. In any correspondence on this product always refer to the above EPA registration number.		
On the basis of information furnished by the registrant, the above named pesticide is hereby registered/reregistered under the Federal Insecticide, Fungicide and Rodenticide Act.  Registration is in no way to be construed as an endorsement or recommendation of this product by the Agency. In order to protect health and the environment, the Administrator, on his motion, may at any time suspend or cancel the registration of a pesticide in accordance with the Act. The acceptance of any name in connection with the registration of a product under this Act is not to be construed as giving the registrant a right to exclusive use of the name or to its use if it has been covered by others.  This product is conditionally registered in accordance with FIFRA section 3(c)(7)(A) provided that you:  1. Submit and/or cite all data required for registration/reregistration of your product when the Agency requires all registrants of similar products to submit such data.  2. Make the following label changes before you release the product for shipment: a. Revise the EPA Registration Number to read, "EPA Reg. No. 59639-151". b. Revise the header "GENERAL INFORMATION" to read "INFORMATION." c. Revise the header "RESTRICTIONS AND LIMITATIONS" to read "RESTRICTIONS."		
Signature of Approving Official:    Kable Bo Davis, Entomologist Insecticide-Rodenticide Branch, Registration Division (7505P)	Date:  FEB 28 2008	

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EPA Reg. No. 59639-151

3. The data requirements for storage stability (830-6317) and corrosion characteristics (830- 6320) have not been satisfied, and must be submitted within eighteen months of the date of this letter.
4. Submit one copy of the revised final printed label for the record before you release the product for shipment.

If these conditions are not complied with, the registration will be subject to cancellation in accordance with FIFRA section 6(e). Your release for shipment of the product constitutes acceptance of these conditions.

A stamped copy of the label is enclosed for your records.

Kable Bo Davis  
Entomologist  
Insecticide-Rodenticide Branch  
Registration Division (7505P)

Enclosure

3 8 10



GROUP	4A	INSECTICIDE
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## V-10170 5 FS (INSECTICIDE)

AN INSECTICIDE SEED TREATMENT PRODUCT PROVIDING SYSTEMIC SEED  
AND SEEDLING PROTECTION AGAINST EARLY SEASON INSECTS

Active Ingredient	By Wt.
*Clothianidin .....	47.8%
Other Ingredients .....	52.2%
Total .....	100.0%

\*(E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine

V-10170 5 FS contains 5 lbs clothianidin per gallon.

**KEEP OUT OF REACH OF CHILDREN**

**CAUTION**

**SEE NEXT PAGE FOR PRECAUTIONARY STATEMENTS**

**NET CONTENTS** \_\_\_\_\_

EPA Reg. No. 59639-XXX  
EPA Est. No.

**ACCEPTED**  
**with COMMENTS**  
**In EPA Letter Dated:**  
**FEB 28 2008**

Under the Federal Insecticide,  
Fungicide, and Rodenticide Act,  
as amended, for the pesticide  
registered under EPA Reg. No.  
59639-151

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**PRECAUTIONARY STATEMENTS**  
**HAZARDS TO HUMANS & DOMESTIC ANIMALS**  
**CAUTION**

Harmful if swallowed.

FIRST AID	
If swallowed:	<ul style="list-style-type: none"><li>• Call a poison control center or doctor immediately for treatment advice.</li><li>• Have a person sip a glass of water if able to swallow.</li><li>• Do not induce vomiting unless told to do so by a poison control center or doctor.</li><li>• Do not give anything to an unconscious person.</li></ul>
NOTES TO PHYSICIAN	
Treatment is supportive and symptomatic.	
HOT LINE NUMBER	
Have the product container or label with you when calling a poison control center or doctor, or going for treatment. You may also contact <b>800-892-0099</b> for emergency medical treatment information.	

**PERSONAL PROTECTIVE EQUIPMENT (PPE)**

Some of the materials that are chemical-resistant to this product are listed below. If you want more options, follow the instructions for category A on an EPA chemical-resistance category selection chart.

**Applicators and other handlers must wear:** Long-sleeved shirt and long pants, shoes plus socks and chemical-resistant gloves made of any waterproof material such as Natural Rubber  $\geq$  14 mils.

Follow manufacturer's instructions for cleaning/maintaining PPE. If there are no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

**USER SAFETY RECOMMENDATIONS**

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

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**ENVIRONMENTAL HAZARDS**

This product is toxic to aquatic invertebrates. Contain product spillage and equipment leaks, disposing of wastes according to disposal instructions provided in this label. Do not contaminate water when disposing of equipment washwater or rinsate. Cover or incorporate spilled treated seed.

**DIRECTIONS FOR USE**

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

**READ ENTIRE LABEL. USE STRICTLY IN ACCORDANCE WITH PRECAUTIONARY STATEMENTS AND DIRECTIONS AND WITH APPLICABLE STATE AND FEDERAL REGULATIONS.**

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the State or Tribal agency responsible for pesticide regulation.



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**DISCLAIMER, RISKS OF USING THIS PRODUCT,  
LIMITED WARRANTY  
AND LIMITATION OF LIABILITY**

**IMPORTANT:** Read the entire Label including this Disclaimer, Risks of Using this Product, Limited Warranty, and Limitation of Liability before using this product. If the terms are not acceptable THEN DO NOT USE THE PRODUCT; rather, return the unopened product within 15 days of purchase for a refund of the purchase price.

**RISKS OF USING THIS PRODUCT**

The Buyer and User (referred to collectively herein as "Buyer") of this product should be aware that there are inherent unintended risks associated with the use of this product which are impossible to eliminate. These risks include, but are not limited to, injury to plants and crops to which this product is applied, lack of control of the target pests or weeds, resistance of the target pest or weeds to this product, injury caused by drift, and injury to rotational crops caused by carryover in the soil. Such risks of crop injury, non-performance, resistance or other unintended consequences are unavoidable and may result because of such factors as weather, soil conditions, disease, moisture conditions, irrigation practices, condition of the crop at the time of application, presence of other materials either applied in the tank mix with this product or prior to application of this product, cultural practices or the manner of use or application, (or a combination of such factors) all of which are factors beyond the control of Valent. The Buyer should be aware that these inherent unintended risks may reduce the harvested yield of the crop in all or a portion of the treated acreage, or otherwise affect the crop such that additional care, treatment and expense are required to take the crop to harvest. If the Buyer chooses not to accept these risks, THEN THIS PRODUCT SHOULD NOT BE APPLIED. By applying this product Buyer acknowledges and accepts these inherent unintended risks AND TO THE FULLEST EXTENT ALLOWED BY LAW, AGREES THAT ALL SUCH RISKS ASSOCIATED WITH THE APPLICATION AND USE ARE ASSUMED BY THE BUYER.

Valent shall not be responsible for losses or damages (including, but not limited to, loss of yield, increased expenses of farming the crop or such incidental, consequential or special damages that may be claimed) resulting from use of this product in any manner not set forth on the label. Buyer assumes all risks associated with the use of this product in any manner or under conditions not specifically directed or approved on the label.

**LIMITED WARRANTY**

Valent warrants only that this product conforms to the chemical description on the label and is reasonably fit for the purposes stated in the label, under average use conditions, when used strictly in accordance with the label and subject to the Risks of Using This Product as described above. To the extent consistent with applicable law AND AS SET FORTH ABOVE, VALENT MAKES NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED. No agent or representative of Valent or Seller is authorized to make or create any other express or implied warranty.

**LIMITATION OF LIABILITY**

To the fullest extent allowed by law, Valent or Seller is not liable for any incidental, consequential, indirect or special damages resulting from the use or handling of this product. The limitation includes, but is not limited to, loss of yield on all or any portion of the treated acreage, increased care, treatment or other expenses required to take the crop to harvest, increased finance charges or altered finance ratings, emotional or mental distress and/or exemplary damages. TO THE FULLEST EXTENT ALLOWED BY LAW, THE EXCLUSIVE REMEDY OF THE BUYER, AND THE EXCLUSIVE MAXIMUM LIABILITY OF VALENT OR SELLER FOR ANY AND ALL CLAIMS, LOSSES, INJURIES OR DAMAGES (INCLUDING CLAIMS BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE) RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT SHALL BE THE RETURN OF THE PURCHASE PRICE OF THIS PRODUCT OR, AT THE ELECTION OF VALENT OR SELLER, THE REPLACEMENT OF THE PRODUCT.

**PROMPT NOTICE OF CLAIM**

To the extent consistent with applicable law allowing such requirements Valent must be provided notice as soon as Buyer has reason to believe it may have a claim, but in no event later than twenty-one days from date of planting, or twenty-one days from the date of application, whichever is later, so that an immediate inspection of the affected property and growing crops can be made.

To the extent consistent with applicable law if Buyer does not notify Valent of any claims, in such period, it shall be barred from obtaining any remedy.

**NO AMENDMENTS**

Valent and Seller offer this product, and Buyer accepts it, subject to the foregoing Disclaimer, Risks of Using This Product, Limited Warranty and Limitation of Liability, which may not be modified by any oral or written agreement.

**TANK MIXES**

**NOTICE:** Tank mixing or use of this product with any other product which is not specifically and expressly authorized by the label shall be the exclusive risk of user, applicator and/or application advisor.

**Read and follow the entire label of each product to be used in the tank mix with this product.**

### RESISTANCE MANAGEMENT

V-10170 5FS is a neonicotinoid and a Group 4A insecticide. Insect biotypes with acquired resistance to Group 4A insecticides may eventually dominate the insect population if Group 4A insecticides are used repeatedly in the same field or in successive years as the primary method of control for targeted species. This may result in partial or total loss of control of those species by V-10170 5FS or other Group 4A insecticides. Valent U.S.A. Corporation strives to maintain strong stewardship of this product by recommending that its use be coordinated in a planned resistance management strategy program established for the specific crop and area.

The following label restrictions must be followed to reduce the chance of resistance development:

- Do not apply a neonicotinoid insecticide to any crop that has been previously treated with V-10170 5FS seed treatment.
- Avoiding the consecutive use of V-10170 5FS or other Group 4A insecticides that have a similar target site of action on the same insect species.
- Contact your local extension specialist, certified crop advisors and/or manufacturer for insecticide resistance management or IPM recommendations for the specific site and resistant pest problems.
- For further information or to report suspected resistance, you may contact Valent U.S.A. Corporation at 800-682-5368.

## DIRECTIONS FOR USE

### RESTRICTIONS AND LIMITATIONS

V10170 5FS must be used only in accordance with recommendations on this label utilizing commercial liquid or slurry seed treatment equipment to secure proper application. Always mix product thoroughly before use.

As stated by regulations specified in 40 CFR 153.155, all seed treated with V-10170 5FS must be colored with an EPA-approved dye or colorant to visually distinguish seed is treated with a pesticide. It is mandatory that such dye or colorant be added into the slurry mixture containing V-10170 5FS, prior to application through commercial seed treatment equipment. This regulation is necessary to prevent treated seed from accidental use as a food for man or feed for animals.

### Seed Quality And Storage Of Treated Seed

Seed treatments applied to low vigor or poor quality seed or to mechanically damaged seed may result in loss of seed germination or reduced seedling vigor. To verify seed safety, treat a small portion of seed with the desired slurry mixture (V-10170 5FS alone or in combination with other commercial seed treatment products) prior to treatment of an entire seed lot. Utilize standard seed germination methodologies to determine and verify seed safety. Proper storage conditions of treated seed are recommended. Due to seed quality and seed storage conditions beyond the control of Valent U.S.A. Corporation, no claims are made to guarantee the germination of carry-over treated seed.

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**Seed Bag Label Requirement Of Treated Seed**

The Federal Seed Act requires that bags containing treated seed be labeled or tagged with the following information:

- This seed has been treated with V-10170 5FS containing clothianidin.
- Do not use for feed, food, or oil processing.
- Rapeseed greens and seed grown or harvested from V-10170 5FS treated seed must not be used for feed or human consumption. Rapeseed grown and harvested from V-10170 5FS treated seed is only for industrial uses and cannot be used for edible oil or any human/feed consumption.
- Store away from feeds and other foodstuffs.
- Wear long sleeved shirt, long pants and waterproof gloves when handling treated seed.
- Dispose of all excess treated seed. Left over treated seed may be double-sown around the headland or buried away from water sources in accordance with local requirements. Do not contaminate water bodies when disposing of planting equipment washwaters.
- Dispose of seed packaging in accordance with local requirements.
- Treated seeds exposed on soil surface may be hazardous to wildlife. Cover or collect treated seeds spilled during loading.

ROTATIONAL CROP PLANT-BACK INTERVALS					
Crop Planted	Immediate Plant-back	30-Day Plant-back	4-Month Plant-back	8-Month Plant-back	12-Month Plant-back
Field Corn, Popcorn	Canola, Cotton, Field Corn, Popcorn, Rapeseed, Sweet Corn	Cereal Grains, Dry Beans, Grasses, Non-grass Animal Feeds, Root and Tuber Vegetables, Soybeans		Sugarcane	Any crops without an earlier plant-back interval
Canola, Rapeseed, Sorghum, Sweet Corn	Canola, Cotton, Field Corn, Popcorn, Rapeseed Sorghum, Sweet Corn	Cereal grains, Grasses, Non-grass Animal Feeds, Soybeans, Dry Beans, Root and Tuber Vegetables	Any crop without an earlier plant-back interval		

**GENERAL INFORMATION**

V-10170 5FS (clothianidin) is a systemic insecticide seed treatment providing seed and seedling protection against certain soil insects and early-season foliar insects of canola/rapeseed, corn, and sorghum.

Accurate application of V-10170 5FS to seed is required for best performance. Application to seed by commercial seed treatment equipment utilizing standard liquid or slurry treaters, is necessary. Thoroughly mix V-10170 5FS prior to use or use entire container at one time. Tank mixtures with other seed treatment products should be pretested to evaluate formulation compatibility and to assure proper physical compatibility of products. Be aware of limitations or cautions documented on labels of all products used in a seed treatment mixture.

**CANOLA/RAPESEED**

<b>Crop</b>	<b>Insect Pests</b>	<b>V-10170 5 FS Use Rates fl oz/100 lbs seed</b>	<b>Further Use Instructions</b>
Canola Rapeseed	Flea Beetle Wireworm	10.23	V-10170 5 FS provides early season protection against listed pests.

**CORN**

<b>Crops</b>	<b>Insect Pests</b>	<b>V-10170 5 FS Use Rates</b>		<b>Further Use Instructions</b>
		<b>fl oz/unit of seed*</b>	<b>mg ai/kernel</b>	
Corn Field Pop Seed Sweet Corn	Chinch Bug Corn Flea Beetle Corn Leaf Aphid Cutworm (black) Grape Colaspis Seedcorn Maggot Southern Corn Leaf Beetle Southern Corn Rootworm Southern Green Stinkbug Storage Pests (including Indian Meal Moth Lesser Grain Borer Red Flour Beetle Rice Weevil Rusty Grain Beetle) Sugarcane Beetle White Grub (including European Chafer Larvae May/June Beetle Larvae Japanese Beetle Larvae Thrips Wireworm	1.13	0.25	Provide early seed and seedling protection against listed pests.  <b>For Storage Pests:</b> Follow guidelines for control of stored grain insects, it is advised that seed with existing populations of storage pests be fumigated prior to treating and bagging of seed.
Field Corn and Popcorn	<b>For Early Season Suppression of:</b> Corn Rootworm (including Mexican Northern Southern) Southern Corn Billbug	5.64	1.25	<b>For Southern Corn Billbug:</b> follow-up foliar spray of a locally registered insecticide may be needed under heavy pest pressure. Consult your local Extension office for recommendations.

\*Corn seed unit = 80,000 seed

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**SORGHUM**

Crop	Insect Pests	V-10170 5 FS Use Rates fl oz/100 lbs seed	Further Use Instructions
Sorghum	Black Granulate Cutworm Chinch Bug Corn Leaf Aphid English Grain Aphid Greenbug Seed Corn Maggot White Grub Wireworm Yellow Sugarcane Aphid	5.1 to 6.4	V-10170 5 FS provides seed and seedling protection against listed pests.

**STORAGE AND DISPOSAL**

Do not contaminate water, food or feed by storage and disposal.

**PESTICIDE STORAGE**

Store in a dry place away from excessive heat.

Do not store near food or feed.

Store in original container only.

To close package, replace and tighten cap to form an airtight seal.

**PESTICIDE DISPOSAL**

Wastes resulting from the use of this product may be disposed of on site or at an approved waster disposal facility.

**CONTAINER DISPOSAL**

Triple rinse (or equivalent), then offer for recycling or reconditioning or puncture and dispose of in a sanitary landfill or (if allowed by State and local authorities) by burning. If burned, stay out of smoke.

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Manufactured For:

**Valent U.S.A. Corporation**

P. O. Box 8025

Walnut Creek CA 94596-8025

[www.valent.com](http://www.valent.com)

Made in U.S.A.

EPA Reg. No. 59639-XXX

EPA Est. No.

059639-00XXX.20070904.V101705FS